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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE )  
COMMISSION, )  
Plaintiff, )  
v. ) Case No. 2:15-cv-00269-MAK  
BONAN HUANG, ) (E.D.Pa.)  
NAN HUANG, )  
Defendants. )

**DECLARATION**

I, Dr. Torben Voetmann, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge:

1. I am a Principal at The Brattle Group, a financial and economic consulting firm, and an adjunct professor at the University of San Francisco's School of Management.
2. I have been asked by counsel for Defendants to examine the number of instances in which price returns following revenue announcements went in the opposite direction of "revenue surprises", defined by Mr. Stephen Graham as the difference between actual revenues and analyst revenue forecasts for a given company for any given quarter.<sup>1</sup> A positive revenue surprise denotes that actual revenues exceeded the corresponding analyst revenue forecast, and vice versa for a negative revenue surprise. I rely on the data I gathered for my rebuttal report and conduct my analysis for the subset of 132 companies for which Mr. Graham found a statistically significant correlation between Capital One transaction data and revenues.<sup>2</sup>

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<sup>1</sup> Mr. Graham's measure of revenue surprises is thus not normalized by price or any other measure.

<sup>2</sup> See Graham Report, Exhibit B.

3. Exhibit 1 below displays the results of my analysis. There are 2,286 company quarters or observations in total for the subset of 132 companies with available data for reported revenues, analyst revenue forecasts and price returns. Panel A shows that abnormal price returns (adjusting for the market) went in the opposite direction of revenue surprises for approximately 44% of the total number of observations. The results are similar if I examine raw price returns instead of abnormal price returns, displayed in Panel B.

**Exhibit 1**  
**Price Returns vs. Revenue Surprises for Graham's 132 "Significant" Companies**

	Abnormal Price Returns			Raw Price Returns	
	Occurrences	Percentage of		Occurrences	Percentage of
		Total	[A]		
Positive Revenue Surprise, Negative Price Returns	[1]	585	25.6%	579	25.3%
Negative Revenue Surprise, Positive Price Returns	[2]	432	18.9%	408	17.8%
<b>All Revenue Surprises with Opposite Price Returns</b>	<b>[3]</b>	<b>1017</b>	<b>44.5%</b>	<b>987</b>	<b>43.2%</b>
Total Observations (Company Quarters)	[4]	2286	100.0%	2286	100.0%

Source: Bloomberg LP; Expert Report of Stephen Graham dated Sept. 18, 2015.

Note:

[1]: The company reported revenues are greater than the analyst revenue forecasts and the price return measure is negative.

[2]: The company reported revenues are less than the analyst revenue forecasts and the price return measure is positive.

[3]: [1] + [2]

[4]: The total number of quarterly company observations with available reported revenues, analyst revenue forecasts, and price returns data.

[A]: Abnormal Price Returns are calculated as Raw Price Return - SPXT Index Price Return dependent on the announcement time. If the announcement time is after the market closes, the Price Returns are calculated as the change in the price between the announcement date and the day after the announcement date. Otherwise, the Price Returns are calculated as the change in the price between the day before the announcement date and the announcement date. The SPXT Index is the S&P 500 Total Return Index.

[B]: Raw Price Returns are calculated as the change in Price dependent on the announcement time. See note above.

4. An example of a particular company which had several instances of abnormal price returns moving in the opposite direction of revenue surprises is Advance Auto Parts Inc. (AAP). For example, in 2009 Q1, 2009 Q2, 2013 Q1 and 2014 Q3, actual reported revenues for

Advance Auto Parts were all higher than analyst revenue forecasts but the corresponding abnormal price returns following the revenue announcements were all negative.

5. Similarly, Chipotle (CMG) displayed several instances of the opposite trend, *i.e.* actual revenues were lower than analyst expectations on many occasions but the corresponding post-announcement abnormal price returns were all positive. This occurred in 2009 Q1, 2009 Q2, 2009 Q4, 2012 Q2 and 2014 Q4. For example, in 2009 Q1, Chipotle's actual revenues were \$354 million versus corresponding analyst expectations of \$361 million. However, the abnormal price return following the revenue announcement for this quarter was a positive 6.32% (and the raw price return was 5.57%). Therefore, the actual revenues were lower than the corresponding analyst expectations but, contrary to Mr. Graham's prediction, the price return following the revenue announcement was relatively large and positive. In 2012 Q2, Chipotle again reported actual revenues of \$691 million which were lower than the analyst revenue forecast of \$707 million, but the post-announcement abnormal price return was a positive 1.17% (and the raw price return was a positive 1.46%).
6. In sum, the data shows that for 44% of all observations across company quarters, the price impact was in the opposite direction of the expected price impact based purely on the revenue surprise as defined by Mr. Graham.



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Torben Voetman  
Executed: October 23, 2015



**CONFIDENTIAL**

**Transcript of Dwight Custis Lee Brooks**

**Date:** October 14, 2015

**Case:** Securities and Exchange Commission -v- Huang, et al

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1	UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA	1
2	2	APPEARANCES
3	3	ON BEHALF OF THE PLAINTIFF, SECURITIES AND EXCHANGE
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1 <b>A. There are various levels under me. Some 2 people manage people, and their primary function is 3 managing people, but as you get lower in level, they are 4 the people writing the code.</b> 5        MR. PETERSON: I want to ask you to wait until 6 the questions are fully out there just so the transcript 7 reads properly. You answered that a little quickly. I 8 want to make sure the transcript is clear. 9        BY MR. SOMENSATTO: 10       Q. Can you explain to me -- you mentioned people 11 below you -- where you sit within your group and within 12 the company? 13 <b>A. Yes. As I said, I'm Senior Director. I 14 report into a managing vice president. Directly below 15 me, I have a team of other directors and senior managers 16 that report in to me. And then layers below that you 17 would have people who might be principal associates, 18 senior associates, and associates.</b> 19       Q. How many people directly report to you? 20 <b>A. Directly report to me?</b> 21       Q. Approximately. 22 <b>A. It's currently five people.</b> 23       Q. And then underneath those five people, how 24 many people are there regardless of level? 25 <b>A. I tell you in total with me included, it's</b>	9 1        Q. So is Card Operations the biggest sector 2 within Capital One when you compare it to those other 3 what you were saying; car financing and consumer 4 banking? 5        MR. PETERSON: Objection. Vague as to 6 "biggest." 7        BY MR. SOMENSATTO: 8        Q. The most people working in that area. 9        I ask because I think of Capital One as a 10 credit card company, but if I am mistaken about how it's 11 structured within the company, correct me. But is it 12 accurate that Card Operations is the largest operation 13 in terms of number of people working there in Capital 14 One? 15 <b>A. I can't say that I actually know the numbers 16 across the different organizations so speak to.</b> 17       Q. So are your typical job responsibilities 18 mainly related to managing other people, or are you 19 actually writing code and doing that kind of work? 20       MR. PETERSON: Objection to form. 21       MR. INGOGLIA: Objection. 22       THE WITNESS: The primary responsibility of my 23 job role is to manage and lead teams. I will at times 24 still get into the coding. 25	11
10 1 <b>about 85 people.</b> 2        Q. So basically you're the top of a pyramid 3 within the company that 85 people report to? 4 <b>A. I report obviously up to somebody as well, but 5 85 people reporting to me, yes, sir.</b> 6        Q. Okay. And all the people that report to you 7 are in the sector that is doing data analysis of 8 cardholder transactions? Is that accurate? 9 <b>A. It would be data analysis of within Card 10 Operations. It may deal with cardholder transactions. 11 It could deal with other subject areas.</b> 12       Q. Can you explain to me what Card Operations is 13 for a lay person who is not involved in the credit card 14 industry? 15 <b>A. Yeah. Card Operations would be for anybody 16 using a Capital One credit card. It would be that 17 sector of the business within Capital One that I am 18 supporting in terms of data analysis.</b> 19       Q. Can you give me a sense like what other areas 20 outside of card operations as credit does Capital One 21 have? 22 <b>A. Yeah. Outside of Card Operations, there would 23 be our bank operations who would deal with retail 24 banking. There are auto finance areas which would deal 25 with car loans. Those are a couple of examples for you.</b>	12 1        Q. In that role, do you make hiring and firing 2 decisions within your group? 3 <b>A. The hiring and firing, I will say I can 4 influence it.</b> 5        Q. So when you say you can influence it, what 6 does that mean? You can give recommendations to others 7 who make the ultimate decision? 8 <b>A. There are other people that can influence the 9 size of my team, how many people I need to have on staff 10 besides myself.</b> 11       Q. How long have you been in your current 12 position? 13 <b>A. As a Senior Director, about two years.</b> 14       Q. And how long have you been at Capital One? 15 <b>A. I have been at Capital One since 16 September 1996.</b> 17       Q. Let's just do this in whatever way is easiest 18 for you, if it's chronological order going forward or 19 backwards. But can you tell me the other positions 20 you've held at Capital One? I know it's a long career. 21 <b>A. So September 1996 I started in call centers. 22 Do you need specific names of the different call 23 centers?</b> 24       Q. Well, what is the call center related to? 25 <b>A. The one I started in was retention. I was in</b>	12

<p>1 call centers until the year 2000 and then moved over to  2 data analyst role. From that point on I've actually  3 been in Card Operations in data analyst roles the entire  4 time. In either working in the various business areas,  5 for example, I started in the servicing side, shifted to  6 collections, and then my role expanded to where I was  7 over -- basically had people reporting to me in  8 collections and recoveries, then collections,  9 recoveries, servicing and fraud.</p> <p>10 Q. And have you always been in the Richmond  11 offices of Capital One?</p> <p>12 <b>A. I have always been in Richmond offices within  13 Capital One.</b></p> <p>14 Q. Where did you work before Capital One?</p> <p>15 <b>A. Had various jobs that would be part-time roles  16 for the most part, some of them at various banks, some  17 of them at retail outlets until I started at Capital  18 One.</b></p> <p>19 Q. What's your highest level of education?</p> <p>20 <b>A. I have a master's degree.</b></p> <p>21 Q. What's your master's in?</p> <p>22 <b>A. Business Analytics.</b></p> <p>23 Q. And when did you get that?</p> <p>24 <b>A. 2015.</b></p> <p>25 Q. Congratulations.</p>	<p>13</p> <p>1 A. I had a mathematics degree which played well  2 into the data analyst role, and the additional training,  3 you could take different technical courses to get the  4 technical skills you needed as you went through.</p> <p>5 Q. The math degree was from Hampden-Sydney?</p> <p>6 <b>A. That's correct.</b></p> <p>7 Q. Did you have, like, were you trained in  8 writing certain types of computer code or have you been  9 trained in since you started in data analyst?</p> <p>10 <b>A. I did take training classes early on. Most of  11 my skill set was in SQL code which is very simple  12 language.</b></p> <p>13 MR. SOMENSATTO: Let's get this marked as  14 Exhibit 1.</p> <p>15 (Brooks Exhibit No. 1, Subpoena, was marked  16 for Identification.)</p> <p>17 BY MR. SOMENSATTO:</p> <p>18 Q. Mr. Brooks, I'm handing you what I've had  19 marked as Exhibit 1 which is a copy of the subpoena that  20 we originally served on Capital One, also a schedule of  21 the deposition topics for today, and a listing of  22 companies that the SEC actually filed that at least we  23 understand to be certain companies that the SEC alleges  24 that our clients traded upon information obtained from  25 Capital One.</p>
<p>14</p> <p>1 <b>A. Thank you.</b></p> <p>2 Q. And where did you get that master's from?</p> <p>3 <b>A. Virginia Commonwealth University.</b></p> <p>4 Q. Before that, do you have an undergraduate  5 degree from a four-year college?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. From where?</p> <p>8 <b>A. Hampden-Sydney College.</b></p> <p>9 Q. And when did you obtain that degree?</p> <p>10 <b>A. 1992.</b></p> <p>11 Q. So after graduating Hampden-Sydney in 1992,  12 until the time that you joined Capital One in 1996,  13 during that entire period there was just a variety of  14 part-time jobs; is that correct?</p> <p>15 <b>A. That's correct.</b></p> <p>16 Q. Do you have any kind of certificates or  17 specialty training in a particular area?</p> <p>18 <b>A. I have internal certificates from Capital One  19 in areas like business process management, agile  20 training, design thinking is another one.</b></p> <p>21 Q. You said you got involved in the data analyst  22 role starting in 2000, correct?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. Was there some specific training you needed to  25 become a data analyst?</p>	<p>14</p> <p>16</p> <p>1 As you'll see, I can represent for the record  2 on the subpoena that we had asked you to testify at our  3 New York offices but through agreement with counsel,  4 we're here today. But I'd like you to flip to the  5 second document in there, the Schedule A of deposition  6 topics.</p> <p>7 <b>A. (Witness complies.)</b></p> <p>8 Q. First, I'm just going to go through these  9 topics one at a time, and I want you to just let me know  10 if you are able to testify on behalf of Capital One  11 about each topic.</p> <p>12 So the first one says "the database -- so the  13 preamble to this section is that "The Deponent,' which  14 is you, 'shall be knowledgeable about the following  15 topics: The database of credit cards sales/purchases  16 maintained by Capital One and accessible by Bonan and  17 Nan Huang during their employment at Capital One,  18 including how the database works, the scope of  19 information available on the database, and how the  20 information on the database can be stored and  21 manipulated."</p> <p>22 Do you see that section?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Are you knowledgeable about that topic?</p> <p>25 <b>A. Yes.</b></p>

<p>1 Q. And I mean, we have discussed here that you  2 are basically in a senior position in the data analyst  3 role. Do the data analysts work with the database that  4 we're referencing here?</p> <p>5 A. <b>They do.</b></p> <p>6 Q. And what's the name of that database?</p> <p>7 A. <b>The product is a Teradata product.</b></p> <p>8 Q. So it's a product made by a third party named  9 Teradata?</p> <p>10 A. <b>The company that creates the database  11 management system is Teradata.</b></p> <p>12 Q. Does it have a proprietary name that you guys  13 use within Capital One, or do you call it by any  14 shorthand?</p> <p>15 A. <b>We call it One View or One Ops.</b></p> <p>16 Q. Is there any reason for the two names? Is  17 there any distinction between what they mean?</p> <p>18 A. <b>One View is used by the -- is a user container  19 and database that can be accessed by the general users.  20 One ops is more for operational processes and has a  21 restricted access on it.</b></p> <p>22 Q. When you say "general users," who do you mean?</p> <p>23 A. <b>For example, people within my organization  24 would be accessing One View directly.</b></p> <p>25 Q. And so when we talk about One Ops as having</p>	<p>17</p> <p>1 or at some point? Do you have, like, background  2 knowledge before knowing about this deposition about  3 that topic?</p> <p>4 A. <b>That would be in preparation for today.</b></p> <p>5 Q. Okay. And was preparation done with  6 Mr. Peterson here or with counsel for Capital One?</p> <p>7 A. <b>Internal and external counsel. We prepared  8 for about five hours yesterday.</b></p> <p>9 Q. I don't want you to tell me anything you guys  10 talked about. That's privileged, but you mentioned that  11 you met for about five hours. Is that the period in  12 which you were informed about this topic?</p> <p>13 A. <b>Correct.</b></p> <p>14 Q. Okay. And the topic is worded to ask if you  15 are knowledgeable about Capital One's market share in  16 general and says, if possible, with respect to each of  17 the individual companies.</p> <p>18 Were you able to be educated about the market  19 share that Capital One has with respect to each of those  20 individual companies?</p> <p>21 MR. PETERSON: I object and ask, so that we  22 don't tread on any attorney/client privilege, can you  23 ask if he currently has knowledge or information with  24 regard to those topics?</p> <p>25 MR. SOMENSATTO: Yes.</p>
<p>1 restricted access, who is that limited to?</p> <p>2 A. <b>Tech is the primary user of the One Ops  3 version.</b></p> <p>4 Q. Who is tech or what is tech?</p> <p>5 A. <b>IT, information technology.</b></p> <p>6 Q. I will probably come back to talk about this  7 topic, but I want to move on to the next one in the  8 schedule that you're looking at.</p> <p>9 No. 2 says: "Capital One's market share in  10 the U.S. credit card industry with respect to all credit  11 card purchases, and, if possible, with respect to credit  12 card purchases made at each of the individual companies  13 listed in Attachment A."</p> <p>14 And if you see Attachment A, is the other  15 document behind it. Are you knowledgeable about that  16 topic, or have you obtained knowledge for purposes of  17 this deposition about that topic at all?</p> <p>18 MR. KELLY: Object to the form of the  19 question.</p> <p>20 MR. PETERSON: Same objection.</p> <p>21 BY MR. SOMENSATTO:</p> <p>22 Q. You can answer, go ahead.</p> <p>23 A. <b>I've been informed enough to speak to it, yes.</b></p> <p>24 Q. Okay. And when you say you've been informed  25 enough to speak of it, is that in preparation for today</p>	<p>18</p> <p>1 BY MR. SOMENSATTO:</p> <p>2 Q. Do you have information or knowledge regarding  3 those topics?</p> <p>4 A. <b>Yes, we actually don't know the market share  5 of Capital One.</b></p> <p>6 Q. Okay. Do you know if there's anybody else  7 within Capital One who does have that information?</p> <p>8 A. <b>Capital One does not know.</b></p> <p>9 Q. All right, moving to No. 3. It says: "The  10 information that Bonan and Nan Huang allegedly accessed,  11 saved or printed from Capital One's database of credit  12 card sales/purchases for their personal use during their  13 employment at Capital One."</p> <p>14 Do you have knowledge about that topic?</p> <p>15 A. <b>Yes.</b></p> <p>16 Q. Is that knowledge you had before prepping for  17 the deposition today?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. Okay. I'm going to come back to that later.</p> <p>20 No. 4 says: "The information, if any, that  21 Capital One sells to third parties about credit card  22 sales/purchases made using Capital One credit cards,  23 including any information selected or aggregated from  24 the database that Bonan and Nan Huang had access to and  25 which was sold to third parties.</p>

21 <p>1 "As part of testimony on this topic, the 2 witness should be knowledgeable about what information 3 is sold to third parties, the terms of those deals, and 4 the timing of when information is sold."</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Are you knowledgeable about that topic at this 7 point?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And was this knowledge that you had before 10 prepping for the deposition today?</p> <p>11 <b>A. It was not.</b></p> <p>12 Q. No. 5 on the second page there is: "Bonan and 13 Nan Huang's work history with Capital One, as well as 14 their personal files and the circumstances surrounding 15 their termination as employees of Capital One."</p> <p>16 Do you have knowledge about that topic?</p> <p>17 <b>A. I do.</b></p> <p>18 Q. Actually, I'm going to use that to jump off. 19 How did you know Bonan and Nan Huang?</p> <p>20 <b>A. They worked within our Fraud Disputes Data Analyst Department. They were several positions below me. In other words, they did not report directly to me, but they reported up through me within my organization.</b></p> <p>21 Q. So they were one of the 85 people that would 22 fall under your organization?</p>	23 <p>1 <b>the same area as I did, so it was more of the casual conversations here and there. I knew more of their work performance through their management chain.</b></p> <p>2 Q. Was it the same way with Nan then?</p> <p>3 <b>A. Same with both.</b></p> <p>4 Q. You mentioned management chain. Explain the 5 management chain from where they were up to you, 6 identifying who was each person in each role?</p> <p>7 <b>A. Okay. So Bonan and Huang report in to a manager who reports in to a director and that director reports to me.</b></p> <p>8 Q. During their employment at Capital One, were 9 the manager and director the same people throughout that 10 period?</p> <p>11 <b>A. They were not.</b></p> <p>12 Q. Do you know who the managers and directors 13 were throughout their employment at Capital One?</p> <p>14 <b>A. There are many changes that happen in their tenure at Capital One, so I do not know each change in direct management chain.</b></p> <p>15 Q. Let's start with the manager that they 16 reported to. I mean, can you give me the names of 17 whichever managers you do recall them reporting to? 18 This is with respect to Bonan. We'll do this separately 19 for Nan.</p>
22 <p>1 <b>A. Correct.</b></p> <p>2 Q. Approximately.</p> <p>3 Did you know them personally?</p> <p>4 <b>A. I did, yes.</b></p> <p>5 Q. How frequent were your personal interactions 6 with them?</p> <p>7 <b>A. Rather infrequent.</b></p> <p>8 Q. Would you say, if you can estimate, once a 9 month you would have conversations with them, once a 10 week?</p> <p>11 MR. PETERSON: Objection. Vague as to whether 12 you're talking about Bonan or Nan.</p> <p>13 MR. SOMENSATTO: Let's separate them. That's 14 a good point.</p> <p>15 <b>BY MR. SOMENSATTO:</b></p> <p>16 Q. Obviously we represent both Bonan and Nan in 17 this case, and I'm going to ask you questions about both 18 of them, but I would like, to the best of your ability, 19 to separate, you know, the two people as two people and 20 tell me with respect to each, you know, your answers 21 when I ask you about them if that makes sense.</p> <p>22 So how frequently, let's start with Bonan, 23 would you interact with Bonan?</p> <p>24 <b>A. I would say my personal interactions were 25 pretty infrequent. They did sit within the same floor,</b></p>	24 <p>1 <b>A. Okay. So the current structure or when they were terminated was that Bonan reported into David Samuel and the director was Matt Panas.</b></p> <p>2 Q. Want to spell that for the court reporter, if 3 you know?</p> <p>4 <b>A. It M-a-t-t P-a-n-a-s.</b></p> <p>5 Q. So that was the manager and director that were 6 the most recent manager and director that they reported 7 to before they were let go; is that correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. Or that Bonan reported to?</p> <p>10 <b>A. Correct. So --</b></p> <p>11 Q. Go ahead.</p> <p>12 <b>A. Bonan started July 2011, and, again, different 13 reporting structure. The hiring manager at that time 14 was Nilesh Bhandare.</b></p> <p>15 Q. Can you spell that?</p> <p>16 <b>A. N-i-l-e-s-h B-h-a-n-d-a-r-e.</b></p> <p>17 Q. And this was all a chain within fraud 18 disputes?</p> <p>19 <b>A. Bonan, David and Matt Panas all worked within 20 the specific area of fraud disputes.</b></p> <p>21 Q. Can you describe for me in lay terms, if 22 possible, what fraud disputes handle within Capital One?</p> <p>23 <b>A. They basically support credit card -- they</b></p>

25 <p>1 look for credit card fraudulent activity where you might 2 have people making fraudulent transactions against 3 legitimate cardholders or leveraging payments to commit 4 fraud. So they're looking for those types of 5 transactions.</p> <p>6 We also in the dispute side, current customers 7 call in to dispute charges, so there's a part of our 8 network that supports customers who call in to say this 9 charge is not legitimate and it begins an analysis of 10 those charges.</p> <p>11 Q. With respect to -- well, were the job 12 responsibilities of Bonan and Nan different?</p> <p>13 A. <b>They were different.</b></p> <p>14 Q. Can you explain that to me, like which role 15 each of them had?</p> <p>16 A. <b>Yes. I'll start with Bonan.</b></p> <p>17 Q. Perfect.</p> <p>18 A. <b>He had a long history so job -- I will tell 19 you job roles change over time. I will say the most 20 kind of recent history over the past year, kind of 2014 21 onwards, has been transaction fraud, which means he is 22 looking for activity that deals with transactions that 23 could be identified as fraudulent transactions.</b></p> <p>24 Q. Okay. And how about Nan?</p> <p>25 A. <b>Nan's role was very different. He was in a</b></p>	27 <p>1 Q. What is Matt Panas's role? Like what's his 2 job title, do you know?</p> <p>3 A. <b>He is Director Data Analysis of the fraud 4 disputes area.</b></p> <p>5 Q. So does he manage all of fraud disputes?</p> <p>6 A. <b>Just the data analyst. Fraud disputes as a 7 whole is a larger organization.</b></p> <p>8 Q. That reminds me, one of the questions I wanted 9 to ask was: So I understand the looking for fraud in 10 credit card transactions, what does a data analyst like 11 Bonan do to help achieve that? Are they running -- 12 well, you tell me. What does a data analyst in that 13 area do?</p> <p>14 A. <b>So there are three primary things that a data 15 analyst, I would say, support. One is reporting. So 16 that would be reports on -- that would be reporting on 17 agent performance, for example. Agents handle these 18 fraud disputes calls that come in every day in a call 19 center. So somebody is supporting that particular 20 transaction area will provide performance reporting on 21 those agents, for example. There is reporting.</b></p> <p>22 There is analysis. So analysis could be on 23 certain customer transactions that maybe may need 24 research into whether they are fraudulent or not.</p> <p>25 And then I'll say operational solutions. We</p>
26 <p>1 very specialized area of our Fraud Disputes Department 2 called Judgmental Underwriting.</p> <p>3 Q. Go ahead and explain to me what that is.</p> <p>4 A. <b>For credit card applications that come in 5 where there is a question whether to give the customer 6 the credit line they deserve, he supports basically the 7 call centers that do that analysis for those 8 applications that come in.</b></p> <p>9 Q. Looking for potential fraud in applications?</p> <p>10 A. <b>It's actually not even fraud. It's really 11 supporting the call center to make sure that -- to give 12 them information on their performance.</b></p> <p>13 Q. Okay.</p> <p>14 A. <b>How the agents that are handling the analysis 15 are performing.</b></p> <p>16 Q. But he was still within the group that would 17 be considered fraud disputes?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. Let's go to Bonan. Well, before I do that, 20 let me get who Nan reported to, at least most recently 21 before he was terminated.</p> <p>22 A. <b>Nan reported into Steven Ricker.</b></p> <p>23 Q. Go ahead and spell Ricker.</p> <p>24 A. <b>R-i-c-k-e-r. Steven reported into Matt Panas; 25 Matt reports to me.</b></p>	28 <p>1 run automated batch defenses to defend against fraud. 2 So it would be like a trigger in case we saw certain 3 things happen on a customer's account and it would 4 trigger us to say, hey, let's suspend this account and 5 not let any more charges come through because we think 6 there could be a fraudster using an account. 7 BY MR. SOMENSATTO:</p> <p>8 Q. So someone in, let's stick with Bonan, in his 9 role, would he see the alert that the fraud was 10 happening or would he be the one creating the system to 11 catch the fraud?</p> <p>12 MR. PETERSON: Objection, form.</p> <p>13 Q. You can go ahead and answer if you know.</p> <p>14 A. <b>The data analyst writes the code using SQL 15 against our Teradata databases.</b></p> <p>16 Q. That will help identify the fraud?</p> <p>17 A. <b>Correct.</b></p> <p>18 Q. What about what was, if you can, Nan's 19 functions within his role in judgmental overwriting with 20 respect to being a data analyst on that topic?</p> <p>21 MR. KELLY: Objection to form.</p> <p>22 Q. Go ahead, you can answer if you understand. 23 If you ever don't understand a question, please just let 24 me know and I'll try to reword it.</p> <p>25 MR. PETERSON: Do you understand the question?</p>

	29		31
1	THE WITNESS: I do.	1	some network system with respect to the database?
2	Generically the function is the same, it's	2	MR. PETERSON: Objection to form.
3	reporting analysis and operational solutions within his	3	MR. KELLY: I am going to object to form. I
4	particular role. It was very much call center agent	4	do think that you should probably stick with Bonan and
5	based on the performance of the call center agents	5	Nan so that we don't have a muddled record.
6	themselves.	6	MR. SOMENSATTO: I guess one of the topics of
7	BY MR. SOMENSATTO:	7	the deposition notice is how this database works, that's
8	Q. Going back to Bonan, for what reason would he	8	all I am trying to understand, and how it relates to
9	access the Teradata database pursuant to his job	9	their job responsibilities. I mean, you can feel free
10	function?	10	to answer with respect to Bonan and Nan but --
11	<b>A. So as a data analyst, that is his core job, is</b>	11	MR. KELLY: I am just going to object to the
12	<b>to write SQL code against our databases. So that is the</b>	12	extent that the question doesn't separate out between
13	<b>core functionality that he would use if not every day,</b>	13	Bonan and Nan's job responsibilities. Because the
14	<b>pretty close.</b>	14	witness already said the job responsibilities are
15	Q. When he would write code, would he be	15	different.
16	accessing -- well, would he be downloading any	16	MR. PETERSON: My objection was to the extent
17	information from the database for any reason?	17	you characterize the database working in one manner or a
18	<b>A. Can you rephrase that question, please?</b>	18	different manner, which may or may not be relevant.
19	Q. I can try.	19	BY MR. SOMENSATTO:
20	My very elementary understanding of a	20	Q. Mr. Brooks, my understanding from this case is
21	database, right, would be somewhere that stores a lot of	21	that there was certain information that, let's say,
22	information and there could be inputs into it in the	22	Bonan, start with him, accessed from the database and
23	terms of computer code that tell it, you know, spit out	23	saved locally on his computer. Is that correct?
24	this information or run this function. And then there	24	<b>A. He can manipulate data within the database</b>
25	could be the actual running of that function to access	25	<b>itself. He can also download that information to his</b>
	30		32
1	the information in which case they would be obtaining	1	<b>desktop hard drive if he likes.</b>
2	information as opposed to just inputting code.	2	Q. My question was: Was any part of his job
3	Did their job responsibilities -- well, first	3	responsibilities, did it require him to download that
4	of all, is that an accurate description of what we're	4	information when he was -- well, I'll leave it at that.
5	talking about here?	5	<b>A. Any data analyst is likely to download</b>
6	<b>A. Yes.</b>	6	<b>information to their hard drive desktop at some point,</b>
7	Q. Did their job responsibilities include	7	<b>yes.</b>
8	actually pulling information off the database?	8	Q. Did Capital One have any restrictions that
9	MR. KELLY: Object to the form of the	9	would have prohibited Bonan from downloading information
10	question.	10	and saving it on his personal computer to the extent
11	MR. PETERSON: Same objection.	11	that he was trying to fulfill his job functions?
12	BY MR. SOMENSATTO:	12	<b>A. Can you rephrase that question one more time?</b>
13	Q. Do you understand?	13	Q. As part of Bonan's job responsibilities, was
14	<b>A. I understand.</b>	14	there any restriction on his ability to download and
15	<b>So the Teradata database is a massive database</b>	15	save information on his computer?
16	<b>management system. There's data that flows into it from</b>	16	<b>A. The restrictions would be that the data that</b>
17	<b>production sources. Production sources would be our</b>	17	<b>he is downloading should be limited to business purpose</b>
18	<b>actual call systems, our transaction systems. Someone</b>	18	<b>use only.</b>
19	<b>like Bonan would access that data so they would be able</b>	19	Q. Okay. Was there any monitoring to determine
20	<b>to pull it or extract it to see the data and information</b>	20	whether the information they downloaded was for business
21	<b>in it, but they also have the capability to manipulate</b>	21	purposes, monitoring by Capital One?
22	<b>and create their own tables and manipulate the data to</b>	22	MR. KELLY: Objection to form.
23	<b>meet the needs for their business area.</b>	23	MR. PETERSON: Objection to form.
24	Q. As part of that latter ability, is anything	24	BY MR. SOMENSATTO:
25	saved locally on their computers or is it all saved on	25	Q. Do you understand the question?

33	35
<p>1       <b>A. Yep. There is monitoring of usage of Teradata</b>  2       <b>in terms of impacting the system, and there are controls</b>  3       <b>around access to different data tables. At the same</b>  4       <b>time, again, it should be limited to business purpose,</b>  5       <b>and there's an expectation that the associates know that</b>  6       <b>and are using it for that purpose.</b></p> <p>7       Q. I'm going to give you an example for my life  8       just to see if this actually applies in Capital One, and  9       it may not. You can tell me I'm crazy. I worked at a  10      law firm where we have a database of information. I am  11      allowed to access that, look at it, save stuff to it,  12      but I'm not allowed to save anything on my actual local  13      computer from that.</p> <p>14      Was something like that in place at Capital  15      One?</p> <p>16      MR. PETERSON: Objection to vagueness of the  17      question.</p> <p>18      BY MR. SOMENSATTO:</p> <p>19      Q. Does the question make sense to you?</p> <p>20      <b>A. Yes, the question makes sense to me.</b></p> <p>21      <b>You can save things locally on your hard drive</b>  22      <b>on your Capital One laptop, not your personal laptop.</b></p> <p>23      Q. You mentioned that there's monitoring of  24      Teradata. Limited to the roles that Bonan and Nan had,  25      what kind of -- well, explain to me what monitoring is</p>	<p>1       MR. SOMENSATTO: He is the one who said that  2       there's --</p> <p>3       BY MR. SOMENSATTO:</p> <p>4       Q. There is monitoring of Teradata, right?</p> <p>5       <b>A. Of system performance.</b></p> <p>6       Q. What is system performance?</p> <p>7       <b>A. Query performance.</b></p> <p>8       Q. Right. The query performance being code  9       that's entered into Teradata, right?</p> <p>10      <b>A. Correct.</b></p> <p>11      Q. And that, I presume, is done by a group of  12      people in IT who monitor Teradata; am I correct?</p> <p>13      <b>A. Correct.</b></p> <p>14      Q. My question is: Is any part of that  15      monitoring looking at whether queries are being  16      performed for potential nonbusiness purposes?</p> <p>17      <b>A. That particular monitoring is not monitoring</b>  18      <b>for what you've stated.</b></p> <p>19      Q. Did Nan and Bonan have the same access to the  20      database as each other or did one have greater access?</p> <p>21      If that makes sense.</p> <p>22      MR. PETERSON: Objection, form and vagueness.</p> <p>23      BY MR. SOMENSATTO:</p> <p>24      Q. Does it make sense to you? Sorry, I'm talking  25      in technical language that I don't fully understand</p>
34	36

1       done of Teradata.

2       **A. So it's a system with a massive number of**  
3       **users, thousands of users on Teradata. The system can**  
4       **be impacted by one user using it inappropriately. And**  
5       **what I mean by that is an efficient query or efficient**  
6       **SQL statement they have written can impact the entire**  
7       **user base.**

8       **We have people in our information technology**  
9       **area that monitor for queries that will tax the system**  
10      **to a point it is impacting all the other users, and they**  
11      **will notify those users if that occurs.**

12      Q. Does that occur frequently?

13      MR. PETERSON: Objection.

14      Q. How frequently does that occur that something  
15      is found that may impact the entire system?

16      **A. I'm not sure of the frequency. I'm not the**  
17      **monitor person.**

18      Q. Is there any monitoring of Teradata that is  
19      looking to whether employees are using the information  
20      for nonbusiness purposes?

21      MR. KELLY: Objection to form.

22      MR. PETERSON: Same objection.

23      MR. SOMENSATTO: What's the basis of the  
24      objection?

25      MR. KELLY: Monitoring is vague.

1       personally but --

2       **A. There are honestly so many different roles, I**  
3       **don't know exactly the roles that they had for the**  
4       **Teradata database.**

5       Q. Okay. But based on individual employees, can  
6       the level of access change significantly?

7       MR. PETERSON: Objection, vague. We haven't  
8       established if there are levels of access or what we're  
9       talking about here when we talk about access.

10      Q. We did talk about general users and restricted  
11      access of One Ops. And, I guess, that's my basic  
12      question: Is there some difference in how Bonan could  
13      interact with the database as opposed to Nan?

14      MR. KELLY: Object as vague.

15      **A. They may have access to different tables based**  
16      **on their roles.**

17      Q. So certain tables can be cut off from one  
18      employee based on their job functions?

19      **A. Correct.**

20      Q. Sorry. Thank you for your patience with this.

21      What training did Bonan and Nan have on how to  
22      use Teradata or should I refer to it as One View? Is  
23      that a more accurate description?

24      **A. Either is fine.**

25      Q. Okay. What training did they have on the

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<p>1 database, on how to use the database?</p> <p>2 <b>A. The technical training, I'm not sure exactly</b></p> <p>3 <b>what technical training classes they had taken. The</b></p> <p>4 <b>training I would highlight is the usage of the data and</b></p> <p>5 <b>the proper usage of the data. They had training on the</b></p> <p>6 <b>need to use it for business purposes only and limited</b></p> <p>7 <b>for business purposes.</b></p> <p>8 Q. Was that independent training on just that</p> <p>9 topic or was that part of some broader training?</p> <p>10 MR. PETERSON: Objection, form.</p> <p>11 BY MR. SOMENSATTO:</p> <p>12 Q. Go ahead, you can answer.</p> <p>13 <b>A. They had very specific CBTs, which are</b></p> <p>14 <b>computer based training modules, that they had to take</b></p> <p>15 <b>on an annual basis that stated those requirements.</b></p> <p>16 Q. I understand that training was done on a</p> <p>17 computer but was it a video that they watched or was it</p> <p>18 a test that they had to take?</p> <p>19 <b>A. It is, like I said, a computer-based training</b></p> <p>20 <b>with a series of video or slides that they go through.</b></p> <p>21 <b>I can't say this for all CBTs. Most CBTs do have a test</b></p> <p>22 <b>you have to complete at the end, but you have to at</b></p> <p>23 <b>least fulfill completion of the CBT.</b></p> <p>24 Q. And that's annual training?</p> <p>25 <b>A. Code of conduct definitely is annual, that's</b></p>	<p>1 reviews with their managers?</p> <p>2 <b>A. They would have oral reviews with their</b></p> <p>3 <b>managers.</b></p> <p>4 Q. And then their managers would also prepare</p> <p>5 written reviews?</p> <p>6 <b>A. Written reviews are prepared as well.</b></p> <p>7 Q. Did you prepare written reviews or did you</p> <p>8 just review other people's written reviews?</p> <p>9 MR. PETERSON: Objection, form.</p> <p>10 THE WITNESS: Can you rephrase the question?</p> <p>11 BY MR. SOMENSATTO:</p> <p>12 Q. Did you prepare written reviews about Bonan</p> <p>13 and Nan?</p> <p>14 <b>A. Not for Bonan and Nan, no.</b></p> <p>15 Q. But you reviewed the written reports about</p> <p>16 them?</p> <p>17 <b>A. We have a meeting where we discuss the</b></p> <p>18 <b>performance and rating of each associate in our</b></p> <p>19 <b>department. I'm a key person as part of those</b></p> <p>20 <b>discussions.</b></p> <p>21 Q. If you can, and tell me if you can't, but</p> <p>22 generally do you recall how the performance reviews were</p> <p>23 for Bonan? Was he a good employee, was he a bad</p> <p>24 employee? And let's for now put aside the conduct at</p> <p>25 issue in this case, which we'll get to and talk about</p>

38	40

1 **correct.**

2 Q. When you say "code of conduct," is the code of

3 conduct training with respect just to the database or

4 just more generally code of conduct within Capital One?

5 MR. PETERSON: Objection, form.

6 **A. Code of conduct covers all behaviors of**

7 **Capital One.**

8 Q. We spoke a while ago about your kind of

9 informal communications, if any, or interactions with

10 Bonan and Nan, but I want to get to your formal

11 relationship with them with respect to the company.

12 Were you involved in reviewing their job

13 performance?

14 **A. Not directly with them. I am involved in**

15 **reviewing their job performance through their management**

16 **chain.**

17 Q. And, again, I'm going to ask these questions

18 with respect to both of them. If there is a distinction

19 ever, let me know, otherwise I'm going to have to ask

20 every question twice, which could take a lot longer.

21 So would you sit in their oral reviews?

22 **A. Did not sit in their oral reviews. I sat in**

23 **sessions where we rate the performance of the**

24 **associates.**

25 Q. Did they have oral reviews or face-to-face

1 before then.

2 MR. PETERSON: What time period for that?

3 BY MR. SOMENSATTO:

4 Q. Well, let's establish that. When did you

5 learn about the alleged conduct at issue in this case?

6 **A. It was some time around the beginning of last**

7 **quarter for 2014.**

8 Q. So before that, how were Bonan's job reviews?

9 MR. KELLY: Objection, form.

10 Q. You can answer.

11 MR. PETERSON: Same objection.

12 **A. Bonan was a very solid performer. He was**

13 **doing well.**

14 Q. And how about Nan?

15 **A. Nan was --**

16 MR. PETERSON: Same objection.

17 MR. KELLY: Same objection.

18 Q. Go ahead.

19 **A. Nan was not a solid performer and was getting**

20 **poor ratings.**

21 Q. Do you remember what the basis for those poor

22 ratings were?

23 **A. I don't remember the exact basis for the**

24 **ratings other than the conversation with the manager**

25 **that he was not performing the duties as effectively as**

<p>1     <b>he should be.</b></p> <p>2     Q. Do you remember any specific disciplinary</p> <p>3     issues that Capital One had with respect to Bonan before</p> <p>4     the conduct at issue in this case?</p> <p>5     <b>A. No specific disciplinary issues. He was being</b></p> <p>6     <b>discussed for getting an inconsistent rating.</b></p> <p>7     Q. What does that mean?</p> <p>8     <b>A. That means he's a lower performer in the</b></p> <p>9     <b>company.</b></p> <p>10    Q. This is Bonan or Nan?</p> <p>11    <b>A. Nan. Did you ask me about Nan or Bonan?</b></p> <p>12    Q. I asked about Nan -- or Bonan, but let's go</p> <p>13    with Nan. We're there.</p> <p>14    <b>A. Sorry.</b></p> <p>15    Q. That's fine.</p> <p>16    So he was on the verge of getting an</p> <p>17    inconsistent rating?</p> <p>18    <b>A. He was on the verge of getting an inconsistent</b></p> <p>19    <b>rating.</b></p> <p>20    Q. Sorry, you were explaining to me what that</p> <p>21    meant?</p> <p>22    <b>A. Means he is a lower performer, likely in the</b></p> <p>23    <b>lower 15 percent of performers.</b></p> <p>24    Q. What consequence does that potentially have?</p> <p>25    <b>A. Likely go on a performance plan.</b></p>	<p>41</p> <p>1     like to know which documents you looked at.</p> <p>2     <b>A. So I reviewed documents with the attorneys. I</b></p> <p>3     <b>reviewed a couple of spreadsheets that I had of pretty</b></p> <p>4     <b>much the same documents that the attorneys had.</b></p> <p>5     Q. And what information was on those</p> <p>6     spreadsheets?</p> <p>7     <b>A. Queries that Nan and Bonan had run.</b></p> <p>8     Q. Any other documents besides those</p> <p>9     spreadsheets?</p> <p>10    <b>A. I did go back to the performance ratings as</b></p> <p>11    <b>well.</b></p> <p>12    Q. Is the performance rating something different</p> <p>13    than their written performance reviews? You mentioned a</p> <p>14    meeting where you guys discussed ratings for each</p> <p>15    employee?</p> <p>16    <b>A. Yes, sir, that's what they were, what I</b></p> <p>17    <b>expected them to be.</b></p> <p>18    Q. Right. And I asked what are they? Like what</p> <p>19    is a performance rating?</p> <p>20    <b>A. Nan has the inconsistent rating; Bonan was</b></p> <p>21    <b>going to be a very strong.</b></p> <p>22    Q. And those documents, were those the outgrowth</p> <p>23    of your meeting with other managers -- with the managers</p> <p>24    of Nan and Bonan?</p> <p>25    <b>A. Correct.</b></p>
<p>1     Q. How about Bonan, any disciplinary issues?</p> <p>2     <b>A. I'm not aware of any disciplinary issues.</b></p> <p>3     Q. How are you doing? Do you need a break?</p> <p>4     <b>A. I wouldn't mind a break.</b></p> <p>5     MR. SOMENSATTO: Let's do it then, five</p> <p>6     minutes or so.</p> <p>7     MR. PETERSON: Off the record.</p> <p>8     (Off-the-record discussion was held.)</p> <p>9     (Short recess taken.)</p> <p>10    <b>BY MR. SOMENSATTO:</b></p> <p>11    Q. Mr. Brooks, before I get into the substance,</p> <p>12    real substance, I guess, let me ask you a few questions</p> <p>13    about how you prepared for today.</p> <p>14    When were you notified that you would be</p> <p>15    deposed as part of this case?</p> <p>16    <b>A. About a week, week and a half ago.</b></p> <p>17    Q. And I want you to, again, put aside any</p> <p>18    meeting you had with your attorneys. I don't want to</p> <p>19    hear about that, but did you review any documents in</p> <p>20    preparation for today?</p> <p>21    MR. PETERSON: Other than he might have</p> <p>22    reviewed with attorneys.</p> <p>23    <b>BY MR. SOMENSATTO:</b></p> <p>24    Q. If you reviewed them even with attorneys, I</p> <p>25    don't want to hear about what you discussed, but I would</p>	<p>42</p> <p>1     Q. Any other documents?</p> <p>2     <b>A. No, sir.</b></p> <p>3     Q. Did you have any meetings with the SEC in</p> <p>4     preparation for today?</p> <p>5     <b>A. Did not.</b></p> <p>6     Q. Anything else you did to prepare for today</p> <p>7     that I haven't asked about?</p> <p>8     <b>A. No, sir.</b></p> <p>9     Q. You mentioned you learned about the conduct at</p> <p>10    issue in this case. Well, strike that.</p> <p>11    Before I go there, what is your understanding</p> <p>12    of the allegations in this case?</p> <p>13    MR. PETERSON: Objection, form.</p> <p>14    <b>BY MR. SOMENSATTO:</b></p> <p>15    Q. You can answer.</p> <p>16    <b>A. My understanding is that Nan and Bonan misused</b></p> <p>17    <b>the confidential and proprietary information for Capital</b></p> <p>18    <b>One.</b></p> <p>19    Q. Do you have any understanding, and tell me if</p> <p>20    you don't, about how they allegedly misused that</p> <p>21    information?</p> <p>22    <b>A. I'm aware that they used the information for</b></p> <p>23    <b>nonbusiness purposes. I'm also aware that we have</b></p> <p>24    <b>documents that validate trading.</b></p> <p>25    Q. When you mentioned nonbusiness purposes, are</p>

45 1 you talking about trading, or was there some other 2 nonbusiness purpose that they used the information too, 3 to your understanding? 4 MR. PETERSON: Objection, form. 5 MR. SOMENSATTO: You can answer. 6 MR. KELLY: Same objection. 7 THE WITNESS: I would limit it to their using 8 the information for nonbusiness purpose. 9 BY MR. SOMENSATTO: 10 Q. You said you've seen documents regarding 11 trading. What documents are those? 12 A. <b>An e-mail confirmation of a trade that Bonan 13 made.</b> 14 Q. When did you see that document? Was it just 15 one confirmation? 16 A. <b>Let me think for a second, please.</b> 17 Q. Go ahead. 18 MR. PETERSON: Again, you're not asking him to 19 reveal anything that was discussed with the attorneys, 20 correct? 21 MR. SOMENSATTO: Yes. 22 THE WITNESS: Yes, I'm aware of some -- a 23 trade document for Nan and Bonan and that's all. 24 BY MR. SOMENSATTO: 25 Q. Were you aware of that at the time that they	47 1 <b>management.</b> 2 Q. Now, that was just with respect to the trading 3 element but now I want to go more generally. 4 When was the first time you were notified or 5 informed about some potential misuse of Capital One 6 information by Bonan and/or Nan? 7 MR. PETERSON: Objection to form and it's 8 vague. 9 MR. KELLY: Same objection. 10 BY MR. SOMENSATTO: 11 Q. You can answer. 12 A. <b>I believe it was December 2013 -- I'm sorry, 13 let me rephrase. December 2014. Sorry.</b> 14 Q. What did you learn at that time? 15 A. <b>At that time I learned that there was a 16 potential of misuse of our data at Capital One.</b> 17 Q. How did you learn that? 18 A. <b>Through legal counsel and a conversation with 19 upper management.</b> 20 Q. Okay. Putting aside what you talked about 21 with them -- well, strike that. 22 After were you notified of potential misuse of 23 information, what did you do next, or what did you learn 24 next about what they were doing? 25 MR. PETERSON: Objection to form. And I'm
46 1 were employed at Capital One? 2 MR. PETERSON: Do you understand the question? 3 A. <b>Can you rephrase that?</b> 4 Q. What I'm trying to get at is I understand -- 5 well, you have some understanding that the information 6 was misused for purposes of trading, at least as alleged 7 by the SEC, correct? 8 A. <b>Yes.</b> 9 Q. And I'm trying to know when did you come to 10 that understanding, and what is the basis for that 11 understanding? 12 MR. PETERSON: Could you rephrase the question 13 then? 14 Q. So when did you learn that Nan and Bonan 15 allegedly used the information for purposes of trading? 16 A. <b>That would have been in --</b> 17 MR. KELLY: I'm going to object as vague. 18 MR. PETERSON: Same objection. 19 BY MR. SOMENSATTO: 20 Q. You can answer. 21 A. <b>January 2015.</b> 22 Q. And how did you become aware of that? 23 MR. KELLY: Same objection. 24 MR. PETERSON: Same objection. 25 A. <b>Legal counsel and conversations with upper</b>	48 1 also going to object to the line of questioning to the 2 extent that it may implicate what he learned through 3 discussions with attorneys, how he learned of the 4 information. 5 I don't know, if you want to go there, we can 6 talk about how best to structure that, but this is 7 getting very close to attorney/client material. 8 BY MR. SOMENSATTO: 9 Q. And I don't want you to discuss what you've 10 discussed with counsel, but the SEC has sued our 11 clients. Do you understand that? 12 A. <b>Yes.</b> 13 Q. At some point did Capital One disclose what 14 they had learned about Bonan and Nan to the SEC? 15 MR. PETERSON: Objection to scope. 16 Q. Do you know? 17 A. <b>I don't know what was conveyed to the SEC. I 18 know there were interactions between Capital One and the 19 SEC.</b> 20 Q. Did someone within Capital One identify Bonan 21 and Nan's potential misuse of information, if you know? 22 MR. PETERSON: I'm going to object to the 23 scope again. I don't know if this is covered by the 24 topics that you sent to us. 25

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<p>1 BY MR. SOMENSATTO:</p> <p>2 Q. Well, why were Bonan and Nan terminated?</p> <p>3 <b>A. They were terminated for using confidential</b></p> <p>4 <b>proprietary information for nonbusiness purposes.</b></p> <p>5 Q. And what were they doing, as you understand</p> <p>6 it?</p> <p>7 <b>A. So they were using a couple of tables, a</b></p> <p>8 <b>transaction table and an authorization table, basically</b></p> <p>9 <b>in a manner and frequency which were inconsistent with</b></p> <p>10 <b>their job function.</b></p> <p>11 Q. Transaction table and what was the other one?</p> <p>12 Sorry.</p> <p>13 <b>A. Authorization and transaction tables in a</b></p> <p>14 <b>manner that was, I would say, frequency, scope that was</b></p> <p>15 <b>inconsistent with their job functions. And these</b></p> <p>16 <b>tables, for example, Bonan would hit these tables 12,000</b></p> <p>17 <b>times over a year's period. Nan, 3,200 times. All</b></p> <p>18 <b>other users at Capital One, which would be 2,000, 2,500,</b></p> <p>19 <b>hit these same tables around 3,800 times in total.</b></p> <p>20 Q. Let's take a step back. What do you mean by</p> <p>21 "table?"</p> <p>22 <b>A. Sorry. So table, if I'm looking at the</b></p> <p>23 <b>Teradata database, data gets stored in tables, and you</b></p> <p>24 <b>can think of a table in its most simplistic form as</b></p> <p>25 <b>columns and rows of data most like you were looking at a</b></p>	<p>1 Strike that.</p> <p>2 Is that all you know about how they were</p> <p>3 accessing this information?</p> <p>4 MR. PETERSON: Objection.</p> <p>5 MR. KELLY: Objection, form.</p> <p>6 MR. PETERSON: Mischaracterizes the testimony.</p> <p>7 BY MR. SOMENSATTO:</p> <p>8 Q. I'm not trying to characterize your testimony.</p> <p>9 I want to know, you know, what else do you know about</p> <p>10 what they did with this information?</p> <p>11 <b>A. So the only thing I can limit the improper</b></p> <p>12 <b>usage of the data to is what they did within Capital</b></p> <p>13 <b>One, which is they were using that information in a</b></p> <p>14 <b>nonbusiness form. I am aware that there are trades that</b></p> <p>15 <b>we have documentation of as well.</b></p> <p>16 Q. I get that. And you can put the trades aside</p> <p>17 for now, but how was Capital One able to determine that</p> <p>18 they were using it for nonbusiness purposes? Other than</p> <p>19 you've mentioned the frequency discussion with me, which</p> <p>20 I understand.</p> <p>21 MR. PETERSON: Objection again to form.</p> <p>22 Mischaracterizes his testimony.</p> <p>23 BY MR. SOMENSATTO:</p> <p>24 Q. Well, okay, we have frequency, they were</p> <p>25 pinging it a lot, is that correct, the database?</p>	
<p>1 spreadsheet but it's a database.</p> <p>2 Q. So what is reflected in the transaction table?</p> <p>3 <b>A. Transactions contain information around credit</b></p> <p>4 <b>card -- Capital One credit card customer transactions.</b></p> <p>5 <b>It captures things like date, merchant, transaction</b></p> <p>6 <b>amount.</b></p> <p>7 Q. And what about the authorization table, if</p> <p>8 that's a separate table?</p> <p>9 <b>A. It's a separate table. Authorizations</b></p> <p>10 <b>typically turn into transactions. An authorization is</b></p> <p>11 <b>if you're at a merchant and you swipe your card through</b></p> <p>12 <b>one of those electronic machines, it holds the funds</b></p> <p>13 <b>until the transaction is settled between the bank and</b></p> <p>14 <b>the merchant within a couple days typically.</b></p> <p>15 Q. And you said that they were accessing these</p> <p>16 tables in a frequency and scope that was inconsistent</p> <p>17 with how they should have been using it for their job</p> <p>18 functions; is that correct?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. And you mentioned that they were frequently</p> <p>21 accessing these, more frequently than other employees in</p> <p>22 their area; is that correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Other than that, what else do you know about</p> <p>25 what they were purportedly misusing their information?</p>	<p>50</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Specifically tables that other people did not</p> <p>3 access as frequently as they did, right?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. What else led to the conclusion that they were</p> <p>6 misusing the information?</p> <p>7 <b>A. If we focus on Nan for a second, his job</b></p> <p>8 <b>duties really should have nothing to do with merchant</b></p> <p>9 <b>transaction data at all and he was pulling it</b></p> <p>10 <b>frequently.</b></p> <p>11 <b>If you look at Bonan, his job duties are to</b></p> <p>12 <b>support call centers and do what I would say are one off</b></p> <p>13 <b>analysis of improper transactions, and so when he is</b></p> <p>14 <b>hitting a transaction table 12,000 times, that is very</b></p> <p>15 <b>inconsistent with the expectations of his job.</b></p> <p>16 Q. Go ahead, I don't want cut you off.</p> <p>17 <b>A. In addition, also I reviewed those queries</b></p> <p>18 <b>with his managers. They also stated that they see no</b></p> <p>19 <b>reason for these queries to be run.</b></p> <p>20 Q. And was that the reason they were fired?</p> <p>21 <b>A. They were terminated for using confidential</b></p> <p>22 <b>proprietary information for nonbusiness purposes.</b></p> <p>23 Q. And my question is: I have understood we've</p> <p>24 talked about the trades, but is there any other</p> <p>25 nonbusiness purpose that you're aware of that they used</p>	52

53 1 the information? 2 <b>A. The only thing I can say is they were using</b> 3 <b>their time at Capital One in an improper way and using</b> 4 <b>the data improperly.</b> 5     Q. Okay. 6 <b>A. Which -- that's it.</b> 7     Q. Did you ever explain to them why they were 8     being fired? Let's start with you first. 9        MR. PETERSON: Objection, form. 10      Q. Go ahead, you can answer. 11 <b>A. Yes.</b> 12      Q. Was that in a face-to-face meeting? 13 <b>A. Yes.</b> 14      Q. And who else was in that meeting? 15        MR. PETERSON: Objection, form. 16      Q. You can answer. 17 <b>A. An HR representative.</b> 18      Q. So it was you and an HR representative and, 19     let's start with Bonan, Bonan? 20 <b>A. And Bonan.</b> 21      Q. And when was that? 22 <b>A. I don't know the exact date off the top of my</b> 23 <b>head, just early 2015.</b> 24      Q. And what did you say to Bonan in that meeting? 25 <b>A. That he has breached our code of conduct</b>	55 1     that they were accessing these tables more frequently 2     than the typical employee and for reasons that Capital 3     One concluded were nonbusiness purposes. How did 4     Capital One find that activity? 5 <b>A. We keep a log in the Teradata database</b> 6 <b>management system of all queries run off that system for</b> 7 <b>the past thirteen months. We pulled that log.</b> 8     Q. Why did Capital One pull that log? 9 <b>A. We pulled that log because there was an</b> 10 <b>assumption that they were misusing the data at Capital</b> 11 <b>One.</b> 12    Q. What was the basis of that assumption? 13 <b>A. The basis of the assumption that we had was</b> 14 <b>the information that I had received, again, from</b> 15 <b>conversations with legal and upper management about a</b> 16 <b>potential issue, which was discussed with me at the end</b> 17 <b>of 2014.</b> 18    Q. When you went to look at the log, were you 19     aware of whether Capital One was in discussions with the 20     SEC? 21        MR. PETERSON: Objection, vague. 22     BY MR. SOMENSATTO: 23        Q. You said you knew that Capital One has 24     provided some information to the SEC; is that correct? 25 <b>A. I did at some point.</b>
54 1 <b>policies and is being terminated for that.</b> 2     Q. Is that it? Anything else? 3 <b>A. That was the direct -- pretty direct line that</b> 4 <b>I gave him.</b> 5     Q. Okay. Did he have a chance to respond? 6 <b>A. He asked a couple of follow-up questions. My</b> 7 <b>response was very much the same, he has breached our</b> 8 <b>code of conduct policies.</b> 9     Q. Do you remember any of the questions he asked? 10 <b>A. I believe it was why.</b> 11    Q. Did you do the same thing for Nan? Was it 12    also you, an HR person and Nan? 13 <b>A. Correct.</b> 14    Q. Was the termination on the same day? 15 <b>A. It was.</b> 16    Q. And did you provide the same explanation to 17    Nan? 18 <b>A. I did.</b> 19    Q. How about him, did he say anything or did he 20    have a chance to respond? 21 <b>A. He also asked a question or two as well.</b> 22    Q. And do you remember what those questions were? 23 <b>A. It was along a similar line of why am I being</b> 24 <b>terminated.</b> 25    Q. At any point before -- well, you mentioned	56 1     Q. Right. 2 <b>A. I don't believe I did at the end of 2014.</b> 3     Q. That was my question. 4     I don't want you to go into what you talked 5     about with counsel, but do you know at all why someone 6     originally looked at Nan and Bonan's activity on the 7     database? 8        MR. PETERSON: Objection, vague. 9 <b>A. So I don't have the specific reason we started</b> 10 <b>because I got the information from legal.</b> 11    Q. Right. 12 <b>A. It was very confidential when it was initially</b> 13 <b>told to me, so had limited information at that point.</b> 14 <b>Since then I do know that the SEC is aware of suspicious</b> 15 <b>transactions.</b> 16    Q. That knowledge, do you know if this SEC was 17    aware of suspicious transactions before you went and 18    looked at the log? For example, did a request of 19    Capital One from the SEC cause you to go look at the 20    log? 21        MR. PETERSON: Objection, form. 22 <b>A. Not me directly.</b> 23        Q. Right, I understand not you directly. But you 24    were the one who looked at the log or had somebody look 25    at the log?

<p>57</p> <p>1           MR. PETERSON: Objection to form.  2           Q. Is that correct?  3           <b>A. There were several of us that were looking at</b>  4           <b>the logs.</b>  5           Q. And you were requested to do that through  6           legal counsel?  7           MR. PETERSON: Objection. This is getting  8           into attorney/client. If you want to ask him what he  9           looked at it, I think that's appropriate. If you want  10           to ask him when he looked at it, I think that's  11           appropriate.  12           Q. I'm just trying to figure out how it was that  13           somebody suspected that our clients were doing something  14           wrong. Do you know? If you don't know, that's fine.  15           <b>A. Came to me from legal counsel.</b>  16           Q. Okay. So after you looked at the log, how  17           quickly after that was the decision made to fire Nan and  18           Bonan?  19           <b>A. So the initial notice occurred at the end of</b>  20           <b>2014 in, I believe, December. The logs, I believe, was</b>  21           <b>January, and it was within, I'd say, a couple weeks.</b>  22           <b>I'm not exactly sure of the exact time frame.</b>  23           Q. So in between that initial notice and when  24           they were fired, putting aside any meetings you had with  25           attorneys at Capital One, what did you do during that</p>	<p>1           if Capital One hired outside counsel to do an internal  2           investigation into Bonan and Nan?  3           MR. PETERSON: Objection, form and vague.  4           <b>A. I don't know.</b>  5           Q. Have you ever met with the SEC before today?  6           <b>A. I have not.</b>  7           Q. Has anyone working for you met with the SEC  8           before today?  9           <b>A. Not that I am aware of.</b>  10           Q. Are you aware of any Capital One witnesses,  11           Capital One employees who gave on-the-record testimony  12           to the SEC?  13           <b>A. In reference to this event?</b>  14           Q. Yes.  15           <b>A. I'm not aware of that either.</b>  16           Q. Did the SEC ever make any requests from you or  17           from your group to look at information or look at the  18           activity of Bonan and Nan with respect to this  19           nonbusiness purpose use of the database?  20           MR. PETERSON: Objection to the scope. This  21           isn't covered by any of the topics.  22           <b>A. Can you repeat the question, please?</b>  23           Q. I'm just wondering if the SEC has ever made a  24           request of you or your group to help them in this  25           investigation?</p>
<p>58</p> <p>1           period yourself or that you directed people underneath  2           you to do to look into their activity, to Bonan's and  3           Nan's activity?  4           MR. PETERSON: Objection, form.  5           Q. You can answer.  6           <b>A. In that December time frame?</b>  7           Q. Yes.  8           <b>A. I did not do any further research. I did not</b>  9           <b>even have the names at that point.</b>  10           Q. The names of?  11           <b>A. Bonan and Nan at that point.</b>  12           Q. So when you went to look at the log, were you  13           looking at specific users of the database?  14           <b>A. I looked at the logs in January.</b>  15           Q. Okay, you looked at the logs in January, but  16           you were notified of the potential need to look into  17           them in December; is that correct?  18           <b>A. I was notified of an issue in December.</b>  19           <b>Again, very confidential, no names.</b>  20           Q. Okay. And it wasn't -- when did you learn it  21           was Nan and Bonan that they were looking at, that  22           Capital One was investigating?  23           <b>A. After I got back from the holidays in January.</b>  24           Q. Do you know if -- and this might be legal  25           terminology that you don't even know. But do you know</p>	<p>60</p> <p>1           MR. PETERSON: Same objection and also form.  2           MR. KELLY: I object to form as well.  3           BY MR. SOMENSATTO:  4           Q. You can answer.  5           <b>A. I've had no direct questions or interactions</b>  6           <b>with the SEC.</b>  7           Q. Did someone at Capital One ever obtain Bonan's  8           and/or Nan's computers that they used?  9           <b>A. Yes.</b>  10           Q. When was that?  11           <b>A. That would have been upon termination.</b>  12           Q. So before termination, did anybody review what  13           they had saved on their local computers?  14           MR. KELLY: Object to the form of the  15           question.  16           MR. PETERSON: Same objection.  17           Q. Anyone within Capital One, to your knowledge?  18           <b>A. I'm aware of looking at what was saved through</b>  19           <b>the Teradata log -- saved is not the right word -- what</b>  20           <b>was run through the Teradata logs. I'm not aware of on</b>  21           <b>their personal laptops.</b>  22           Q. Were you or your team ever asked to gather  23           documents with respect to an SEC investigation into this  24           issue?  25           MR. PETERSON: Objection to the extent there</p>

<p>61</p> <p>1 is any attorney/client communications in there.  2 Q. I don't want to know --  3 MR. PETERSON: You can ask him if he gathered.  4 Q. Yeah, did you gather documents that were sent  5 to the SEC?  6 <b>A. I'm aware we gathered documentation, handed it</b>  7 <b>to legal counsel, legal counsel handed it to the SEC.</b>  8 Q. Other than the one trading record that you  9 were aware of, did you review any documents related to  10 trading conducted by Bonan or Nan?  11 MR. KELLY: I object to the extent it  12 mischaracterizes his testimony.  13 MR. PETERSON: Same objection.  14 Q. It's my understanding that earlier you  15 testified that you were aware of at least one e-mail  16 confirmation regarding trading by Bonan; is that  17 correct?  18 <b>A. Yes, and I'll clarify. I'm aware of one</b>  19 <b>document for each one, an e-mail confirmation for one</b>  20 <b>and a Scott Trade statement for the other, but I'm not</b>  21 <b>sure who had what.</b>  22 Q. Were you aware of that before they were  23 terminated, of those documents?  24 <b>A. I was not aware of those documents before they</b>  25 <b>were terminated.</b></p>	<p>63</p> <p>1 <b>been November 2013 onwards.</b>  2 Q. And what was done after that was flagged?  3 <b>A. Bonan was notified by someone within the</b>  4 <b>information technology area about his query using too</b>  5 <b>much Teradata capacity in which you're asked to stop</b>  6 <b>that query. He did not stop it.</b>  7 Q. Was there any follow-up to his not stopping?  8 <b>A. He explained to the IT person why he was going</b>  9 <b>to continue running it. I'm not aware of any follow-up</b>  10 <b>after that.</b>  11 Q. What was his explanation?  12 <b>A. He was running -- he said he was working on a</b>  13 <b>project or a query that was for a regulatory need.</b>  14 Q. Do you have any idea what that regulatory need  15 was that he at least claimed that it was for?  16 <b>A. I believe it was one of the stress tests that</b>  17 <b>banks are put under.</b>  18 Q. Has how Capital One monitors this database  19 changed since Bonan and Nan were fired, if you know?  20 <b>A. The monitoring is the same.</b>  21 MR. PETERSON: Objection to that last question,  22 beyond the scope of the deposition topics.  23 Q. What is Capital One's market share in the U.S.  24 credit card industry?  25 <b>A. Capital One does not know its market share in</b></p>
<p>62</p> <p>1 Q. And my question was: Did you review any other  2 documents regarding their trading activities?  3 <b>A. The only other thing I have ever reviewed that</b>  4 <b>mentions trading is a spreadsheet with a log of</b>  5 <b>potential trades for specific merchants.</b>  6 Q. When did you review that?  7 <b>A. It was either within a couple days of</b>  8 <b>termination or a couple days after. I can't recall</b>  9 <b>whether it was before or after.</b>  10 Q. We discussed earlier -- I don't want to  11 characterize your testimony in any way. We talked a  12 little bit about monitoring of the database. Did any of  13 the monitoring of the Teradata database before the date  14 that your group went in and looked at the logs ever  15 identify any suspicious activity by Bonan or Nan?  16 <b>A. I'm aware of a transaction, a query that Bonan</b>  17 <b>was running that did catch the attention of the people</b>  18 <b>monitoring the systems.</b>  19 Q. When was that? When did it catch their  20 attention?  21 <b>A. Are you talking about date?</b>  22 Q. Just generally. Was it a year or two before  23 they were terminated? Was it a month or two?  24 <b>A. I actually don't know the date. I know it was</b>  25 <b>within the time frame that we analyzed, which would have</b></p>	<p>64</p> <p>1 <b>the industry.</b>  2 Q. Does Capital One know whether it's the largest  3 issuer of credit cards in the U.S. or where it ranks  4 relative to other credit card companies?  5 MR. PETERSON: Objection, form. Vague  6 question.  7 Q. You can answer.  8 <b>A. I don't have a very specific answer. I can</b>  9 <b>tell you it's in the top ten largest issuers.</b>  10 Q. Do you know if anybody at Capital One tracks  11 Capital One's market share within the credit card  12 industry?  13 MR. PETERSON: Objection. He has already  14 testified Capital One doesn't know its market share in  15 the industry.  16 Q. So my question was: Does anybody try to know  17 or is it just something that they don't look into?  18 <b>A. I'm not aware of anybody trying to know.</b>  19 <b>You'd have to know the market share of all the other</b>  20 <b>competitors.</b>  21 Q. Do you know how many transactions in total  22 dollars that Capital One card holders spend with Capital  23 One credit cards in a given year?  24 MR. PETERSON: Objection. That's not a  25 deposition topic. Deposition topic was market share,</p>

65 <p>1 but the entire running of the credit card organization 2 was not a topic. 3 MR. SOMENSATTO: I guess the only way you can 4 know your market share is if you know your total market, 5 right? 6 MR. PETERSON: That makes sense, but he 7 testified they don't know it. 8 Q. Do you know? If you are not certain of the 9 answer, that's fine, but do you know? 10 A. I don't. 11 Q. I think you mentioned this before but let's 12 just make it clear for the record. Do you know what 13 Capital One's market share was with respect to each of 14 the individual companies listed in Attachment A? 15 A. I do not know. 16 Q. Which companies or third party entities other 17 than Capital One have access to the One View or Teradata 18 database? 19 MR. PETERSON: Objection, form. 20 MR. KELLY: Same. 21 BY MR. SOMENSATTO: 22 Q. Does any? 23 A. They do not. 24 Q. For example, you mentioned that Teradata sets 25 up the database, right?</p>	67 <p>1 access to the database? 2 MR. PETERSON: Objection. That's asked and 3 answered. 4 A. They do not have access directly to Teradata. 5 Q. The information that Bonan and Nan accessed 6 from Teradata, how was that information produced to the 7 SEC? 8 MR. PETERSON: Objection to form. 9 THE WITNESS: Documents were gathered based on 10 their transactions in the transaction logs. We handed 11 them to legal counsel. 12 Q. Help me understand the transaction log again. 13 A. Okay. 14 Q. So I understand we have a database here, 15 right? Is there like a specific program that somebody 16 is sitting at a computer uses to interact with the 17 database? Like is there some platform like that they 18 are looking at? 19 A. Sorry, can you repeat? Repeat the question, 20 please. 21 Q. Listen, I'm coming from a very lay background 22 here, right, so I'm imagining, right, when I use my 23 Gmail, that there is a database of my information off 24 somewhere over here. 25 A. Okay.</p>
66 <p>1 A. Correct. 2 Q. I presume they then don't have access to use 3 the database in any way; is that correct? 4 A. Not that I am aware of. 5 Q. Are there any third party service providers 6 that analyze the information on the database? 7 MR. PETERSON: Objection, vague. 8 A. I'm not aware of any third parties analyzing 9 data on the Teradata. 10 Q. Do like MasterCard and Visa get access to 11 information on the database? 12 MR. KELLY: Objection. 13 MR. PETERSON: Objection, asked and answered. 14 MR. KELLY: Asked and answered, yes. 15 Q. Go ahead. 16 A. They don't. It's proprietary confidential 17 information. 18 Q. Is there any way in which Capital One shares 19 the data on that database with third parties? 20 MR. KELLY: Objection. 21 MR. PETERSON: Objection. Asked and answered. 22 MR. KELLY: Same objection. 23 Q. Go ahead. 24 A. They do not. 25 Q. Do you know if Capital One has given the SEC</p>	68 <p>1 Q. And I'm looking at a Gmail screen. This is 2 how I access it. I search for something, it pops up and 3 this is how I'm seeing the world. And I'm wondering, 4 Bonan and Nan, how do they see the database? Is it some 5 kind of proprietary software on their computers? 6 A. Yeah. You can see the data in the database 7 through different platforms. For example, Teradata has 8 a GUI graphical user interface front end called Teradata 9 SQL Assistant where they can literally select data from 10 different tables and see it. That's one method. 11 There's all sorts of methods. I don't know if 12 you need them. 13 Q. And so when you ran the log or had somebody 14 run the log on Bonan and Nan's transactions, kind of 15 walk me through practically what does that mean? Do you 16 guys run a search in this interface that produces some 17 result? 18 A. Yep. So the log is just another table in the 19 Teradata database management system that captures every 20 SQL query that is run against the Teradata system. 21 Q. And does -- go ahead, sorry, I don't want to 22 cut you off. 23 A. Basically we write another query to extract 24 queries run by Bonan and Nan. 25 Q. And the queries, are they like created out of</p>

69 <p>1 like computer code? Is that how it works? 2 <b>A. Yes, it looks like a computer code.</b> 3 Q. And then when you run that query, you get a 4 log of all the queries that an individual user like 5 Bonan entered into the system over a certain time 6 period; is that correct? 7 MR. PETERSON: Objection, vague. Depends on 8 what the query is. 9 Q. Well, what query did you run? 10 <b>A. We ran a query specifically looking for</b> 11 <b>queries that searched for merchant for a specific time</b> 12 <b>period, November 2013 going forward.</b> 13 Q. Okay. And so then you received a log of all 14 the queries from Bonan user of looking at retail either 15 transaction data or authorization data; is that correct? 16 <b>A. We actually searched on a field called -- with</b> 17 <b>the name Merchant in it. It could have pulled from a</b> 18 <b>query that hit the transaction or authorization table.</b> 19 <b>It also could have pulled any tables they themselves</b> 20 <b>created.</b> 21 Q. And the result of that query that you did was 22 a log of all their queries; is that correct? 23 <b>A. It's a log of all their queries that had a --</b> 24 <b>that leveraged a merchant field name.</b> 25 Q. And I think you quoted the number that you</p>	71 <p>1 question. 2 MR. PETERSON: Same objection. 3 Q. You can answer. 4 <b>A. I would expect the log to focus more on</b> 5 <b>customer transactions and not on submitting data by</b> 6 <b>merchants. If there was any merchant investigation, I</b> 7 <b>would have expected it to be one off rather than routine</b> 8 <b>summations by a large number of merchants, ten to</b> 9 <b>fifteen at a time.</b> 10 Q. Again, I'm learning through this, but you are 11 seeing in this log the queries that they made to the 12 system, correct? 13 <b>A. Yes.</b> 14 Q. Presumably those queries, if entered 15 independently, would pull some other information, right, 16 whatever they were requesting; is that correct? 17 <b>A. Can you repeat that again?</b> 18 Q. Yeah. So you are just -- the log that you're 19 seeing is just the queries that they entered? 20 <b>A. Correct.</b> 21 Q. Not the results of their queries? 22 <b>A. Correct.</b> 23 Q. And at any point in time did Capital One run 24 their individual queries to see what the results were? 25 MR. KELLY: Object to the form of the</p>
70 <p>1 found for Bonan. Do you remember what the number was? 2 <b>A. It's about 12,000.</b> 3 Q. Over what time period? 4 <b>A. It was the year 2014.</b> 5 Q. Okay. And was there any effort, then, to try 6 to determine which of those queries were business 7 related and which ones were not business related? 8 MR. PETERSON: Objection, vague, "any effort." 9 BY MR. SOMENSATTO: 10 Q. Yes, just wondering. Go ahead, you can 11 answer. 12 <b>A. Yes, so the intent of the queries, again,</b> 13 <b>based on his job role, he should have been doing one off</b> 14 <b>queries to investigate merchants. In this case, he was</b> 15 <b>summing up transactions by a large host of merchants</b> 16 <b>which did not align with his job duties.</b> 17 Q. So it wasn't just the number of queries, it 18 was also kind of the nature of what he was looking for, 19 to stick with Bonan for now, that raised a concern? 20 <b>A. That is correct.</b> 21 Q. Only answer this if you can. What did you 22 expect, like if you were looking at assuming he had only 23 done his job responsibilities as you expected them to 24 be, what did you expect the log to look like? 25 MR. KELLY: Object to the form of the</p>	72 <p>1 question. 2 <b>A. I did not particularly run his queries to see</b> 3 <b>what the results were.</b> 4 Q. And just from a practical perspective, how 5 would those queries have come back? Like I assume 6 there's some output from the database, right? 7 <b>A. (Nodding in the affirmative.)</b> 8 Q. Is that immediately in a spreadsheet form, or 9 can you determine where that information goes and how 10 you look at it? 11 MR. PETERSON: Objection, form. 12 MR. KELLY: Same objection. 13 <b>A. There are a variety of ways for the data to</b> 14 <b>come back. If you go back to the Teradata SQL Assistant</b> 15 <b>GUI, you could select it. You could actually set the</b> 16 <b>system up to automatically e-mail the results to you.</b> 17 <b>You could look at it directly pulling the data into a</b> 18 <b>spreadsheet from multiple sources.</b> 19 Q. Just because I understand this one, let's say 20 you picked e-mail to you, what would you see in the 21 e-mail? 22 <b>A. Entirely depends on how they set it up. They</b> 23 <b>could send themselves a spreadsheet through an automated</b> 24 <b>fashion. If they spent a lot of time coding, they could</b> 25 <b>actually have the results show in like a tabular form on</b></p>

73 <p>1 the e-mail itself. 2 Q. We have that foundation. What did they 3 actually do, if you know? How did they have the 4 information sent to them from the database? 5 MR. KELLY: Object to the form of the 6 question. 7 MR. PETERSON: Object to form. 8 THE WITNESS: I actually don't know exactly 9 how they sent it to themselves. 10 MR. SOMENSATTO: Mind if I take a two-minute 11 break, talk to Gene, see how long we have? 12 MR. PETERSON: That is fine with us. 13 (Short recess taken.) 14 BY MR. SOMENSATTO: 15 Q. You mentioned while we were discussing market 16 share that your understanding that Capital One is within 17 potentially the top ten of all credit card issuers in 18 the U.S. Do you recall that? 19 A. Yes. 20 Q. Do you know where it ranks on that list of top 21 ten? 22 MR. KELLY: Objection to form. 23 MR. PETERSON: Objection to form. 24 Q. Go ahead. 25 MR. KELLY: Can you specify a year?</p>	75 <p>1 December 1st and the last two weeks of the year, because 2 the last two weeks I was off. 3 Q. So you were off the last two weeks, and then 4 do you know when they were terminated? 5 A. I don't know the exact date. 6 Q. At any time between when you learned about 7 potential concerns with their activity and the date that 8 they were terminated, did you or anyone at Capital One 9 explain to Nan or Bonan that what they did was 10 potentially illegal? 11 MR. PETERSON: Objection to form there. 12 A. We did not. 13 Q. Did you ever inform them that the SEC was 14 aware of their activities? 15 MR. PETERSON: Objection to form. 16 THE WITNESS: We did not. 17 MR. KELLY: Same objection. 18 BY MR. SOMENSATTO: 19 Q. Did you ever inform Bonan or Nan before they 20 were terminated or even after they were terminated that 21 any government agency had been notified about their 22 activity? 23 MR. PETERSON: Objection to form. 24 A. We did not. 25</p>
74 <p>1 MR. SOMENSATTO: True. 2 Q. What year do you know that Capital One was one 3 of the top ten issuers of credit cards? 4 MR. PETERSON: Objection to form. 5 BY MR. SOMENSATTO: 6 Q. You can answer. 7 A. I actually don't know the exact placement, 8 so... 9 Q. And do you know which year, though, that 10 information relates to? 11 MR. PETERSON: Objection to form. 12 A. I can say for the last several years we've 13 been in the top ten. 14 Q. Do you know if it was No. 1? 15 A. I don't. 16 Q. Do you know if it was No. 2? 17 A. I don't. 18 Q. You mentioned, you testified earlier that you 19 first learned about concerns with activities by Bonan 20 and Nan in December 2014, correct? 21 A. Correct. 22 Q. Can you give me a more precise date? You had 23 mentioned a holiday. Do you know when in December you 24 learned? 25 A. I can only say it would have been between</p>	76 <p>1 Q. Did Capital One ever inform or represent to 2 Bonan or Nan that Capital One may press charges against 3 them? 4 A. Repeat the question. 5 Q. Did anyone at Capital One ever inform Bonan or 6 Nan that Capital One was considering pressing charges 7 against them? 8 MR. PETERSON: Objection to form. There is no 9 basis for that. 10 A. We did not. 11 Q. So am I accurate to say that the only 12 explanation given to Bonan or Nan about their 13 termination was what we discussed was said in the 14 meeting earlier? 15 MR. KELLY: Objection, form. 16 A. It was a breach of code of conduct. 17 Q. Was that ever written down in any 18 correspondence to them? 19 MR. PETERSON: Objection to form. 20 A. No, it was not. 21 Q. The message was only verbal from you to them? 22 A. Correct. 23 Q. Did Capital One engage any third parties in 24 assisting in its fraud detection efforts? 25 MR. KELLY: Objection to form.</p>

<p>1                   MR. PETERSON: And objection to scope.  2                   Q. Go ahead, you can answer.  3                   MR. PETERSON: I am going to instruct him not  4                   to answer. That's well outside the deposition topics.  5                   MR. SOMENSATTO: I think I'm setting a  6                   foundation. I want to ask him whether that third party  7                   entity gets any information from the database which is  8                   we are asking about third parties.  9                   MR. PETERSON: He already testified no third  10                  parties have access to the database.  11                  MR. SOMENSATTO: I understand that, and I'm  12                  just trying to make sure I've covered all my bases, all  13                  I'm doing.  14                  MR. PETERSON: Fair enough, but I think that  15                  last question was out the scope. If you want to come at  16                  it a different way. We could have prepared someone to  17                  talk about all the things Capital One does, but he is  18                  not here to talk about that.  19                  MR. SOMENSATTO: I understand what you're  20                  saying, but I asked if any of the data or access to the  21                  database was given to third parties. All I'm trying to  22                  do is ensure there is not some third that's missing. Is  23                  that problematic?  24                  MR. PETERSON: Only to the extent it's already  25                  been asked, and he told you no third parties.</p>	<p>77</p> <p>1                   Q. Has Capital One determined that they violated  2                   any other policies other than the code of conduct?  3                   MR. KELLY: Objection to form.  4                   <b>A. No further research from our end has been done  5                   other than the code of conduct breach.</b>  6                   Q. We discussed one instance in which Bonan's  7                   activity on the database was flagged and he provided an  8                   explanation about needing to do -- needing that data for  9                   a stress test or regulatory response. Do you remember  10                  that?  11                  <b>A. Yes.</b>  12                  Q. At any point during their employment at  13                  Capital One, did Bonan and/or Nan give any other  14                  explanation for these queries that Capital One  15                  discovered that they determined were for nonbusiness  16                  purposes?  17                  MR. PETERSON: Objection to form.  18                  THE WITNESS: Not that I'm aware of.  19                  BY MR. SOMENSATTO:  20                  Q. Have you been asked -- do you know when the  21                  trial date is in this case?  22                  <b>A. I do not.</b>  23                  Q. It's December 11th and then leading into the  24                  next week, I think. Have you been asked by the SEC to  25                  testify at that trial?</p>
<p>1                   Q. So if Capital One were to testify at trial, it  2                   would consistently say no one gets access to the  3                   database other than Capital One employees; is that  4                   correct?  5                   MR. PETERSON: Objection, asked and answered.  6                  You can answer.  7                  <b>A. Nobody has access to the data within the  8                   Teradata. Sorry, no third parties.</b>  9                  Q. You referenced the code of conduct in your  10                  discussion with Bonan and Nan. Is that the only policy  11                  -- well, I guess is the code of conduct at Capital One a  12                  separate policy?  13                  MR. PETERSON: Objection, form. Separate from  14                  what?  15                  Q. Separate from other policies, an insider  16                  trading policy, or is the insider trading policy and  17                  document retention policy, is all of that maintained  18                  under the code of conduct?  19                  MR. PETERSON: Objection to form.  20                  <b>A. Best I can give is code of conduct has its own  21                   training material versus some other policies.</b>  22                  Q. And Bonan and Nan were never informed that  23                  they violated any other policies when they were  24                  terminated, correct?  25                  <b>A. Correct.</b></p>	<p>78</p> <p>1                   <b>A. The trial date for this particular case?</b>  2                  Q. Yes.  3                  <b>A. I have not.</b>  4                  Q. Do you know if anybody at Capital One has been  5                  told to hold that date for trial?  6                  <b>A. I'm not aware. I'm not aware.</b>  7                  Q. Has Capital One identified any other potential  8                  witnesses who may testify at trial, to your knowledge?  9                  <b>A. No. I'm aware of a potential that I may have  10                   to testify in the future. It may be this particular  11                   case.</b>  12                  Q. And do you know if anybody else at Capital One  13                  has been made aware that they may need to testify at  14                  trial?  15                  <b>A. I'm not aware of anybody else.</b>  16                  Q. As I understand it, Teradata maintains all  17                  data regarding every transaction made by Capital One  18                  cardholders. Is that accurate?  19                  <b>A. Teradata houses credit card transaction, all  20                   credit card transaction data plus a lot of other data as  21                   well in addition to that.</b>  22                  Q. I don't want to get too deep into it, but can  23                  you give me generally what other data we're talking  24                  about?  25                  <b>A. It would also house the bank data, the other</b></p>

	81		83
1 <b>bank areas data as well.</b>		1    answer there?	
2    Q. So if I were to go to the gas station right		2    A. <b>Yes, it would be hard for me to assess given</b>	
3    now and use my Capital One credit card, would that		3 <b>the 2,000 and 3,000 associates that can use the</b>	
4    immediately be reflected inside of Teradata?		4 <b>database.</b>	
5       MR. PETERSON: Objection, vague.		5    BY MR. SOMENSATTO:	
6       Q. Go ahead.		6       Q. Well, are you aware of any use of the data for	
7 <b>A. Timing might be slightly different than</b>		7    aggregating transaction data for any purpose? For	
8 <b>immediate, but it would be there at least by the next</b>		8    example, I'll try to contextualize it. Is there any	
9 <b>morning.</b>		9    reason that Capital One gathers all transactions at	
10      Q. And if you can answer this, this might not		10    Wal-Mart for a specific purpose?	
11    even be answerable. But from what source does that		11    A. <b>Somebody were doing analysis around Wal-Mart</b>	
12    information come? Does it come directly from the vendor		12 <b>because maybe they expected some sort of fraud, they may</b>	
13    into the database or is it stored somewhere else before		13 <b>look at Wal-Mart. There is also a difference of between</b>	
14    it goes into Teradata?		14 <b>what I saw as instead of one off, I saw a scope of large</b>	
15      MR. PETERSON: Objection, form, vague.		15 <b>numbers of merchants being summated.</b>	
16      MR. KELLY: Same objection.		16      Q. So has it occurred, for example, that somebody	
17 <b>A. Data lands somewhere else before it lands</b>		17    has aggregated all the data about a company like	
18 <b>directly in Teradata. Basically comes through</b>		18    Wal-Mart to determine whether there's potential higher	
19 <b>production systems, and so that's why it may be there</b>		19    rate of fraud of those entities? Do you know?	
20 <b>the next morning rather than immediate.</b>		20    A. <b>I haven't particularly seen something that</b>	
21      Q. Is production system some separate database?		21 <b>shows me that, but it would be hard to think that a</b>	
22 <b>A. Teradata houses massive amounts of data. A</b>		22 <b>particular merchant hasn't been analyzed at some point.</b>	
23 <b>lot of times production systems only house short periods</b>		23      Q. And when that information, when that query is	
24 <b>of data, so it lands in this area for short periods of</b>		24    run and that report is made in whatever format, does	
25 <b>data before it lands in the longer term storage of</b>		25    that then go to some operator database where it's	
	82		84
1 <b>Teradata.</b>		1    stored?	
2      Q. And then the data that's on Teradata -- and		2      MR. PETERSON: Objection, vague.	
3    let's limit ourselves to the transaction data, maybe		3    BY MR. SOMENSATTO:	
4    even specifically the transaction table that we were		4      Q. Sorry, I know it's a little confusing but if	
5    discussing -- is that information -- strike that.		5    you understand.	
6      We've discussed that you would have expected		6      MR. KELLY: Objection to form.	
7    Bonan to run searches of that data with respect		7      Q. Go ahead.	
8    potentially to individual card users, is that accurate,		8      A. <b>So if somebody is analyzing, like you said,</b>	
9    if you were looking at his normal business activity?		9 <b>Wal-Mart, does it then go to another database?</b>	
10 <b>A. Can you repeat it one more time, please?</b>		10      Q. Yes.	
11      Q. Part of the determination of Capital One that		11      A. <b>Typically somebody would still manipulate that</b>	
12    they were misusing this data was that they were using it		12 <b>data within Teradata. Analysts that have access to</b>	
13    in a scope that you wouldn't expect of their job		13 <b>Teradata all have what's called a user space, which is</b>	
14    functions?		14 <b>an area for them to work with data, manipulate it. And</b>	
15 <b>A. Correct.</b>		15 <b>so typically that's where they would store large sets of</b>	
16      Q. And when I asked you what you would expect		16 <b>data.</b>	
17    them to use it for, you mentioned looking potentially at		17 <b>You can also pull it somewhere else into other</b>	
18    individual users transactions, correct?		18 <b>databases. If you have an SAS database, you can</b>	
19 <b>A. Correct.</b>		19 <b>technically pull it into SAS.</b>	
20      Q. Is Teradata used to aggregate like data on all		20      Q. Are you aware of any instances where data is	
21    of these transactions for any purpose at Capital One?		21    aggregated, for example, in a company like Wal-Mart to	
22      MR. PETERSON: Objection, vague.		22    look at the rate of fraud and provide it to some third	
23 <b>A. That would be hard for me to assess whether --</b>		23    party in an aggregated version?	
24      Q. Well, does the data --		24      A. <b>We do not provide that data to third parties,</b>	
25      MR. PETERSON: Wait. Are you done with your		25 <b>so no.</b>	

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<p>1           MR. SOMENSATTO: I don't think I have anything 2 else.</p> <p>3           MR. PETERSON: You want to take a quick break 4 and look at notes?</p> <p>5           MR. INGOGLIA: Yeah, can we take a quick 6 break?</p> <p>7           MR. PETERSON: Yes. 8           (Short recess taken.)</p> <p>9    BY MR. SOMENSATTO:</p> <p>10          Q. You mentioned Nan potentially getting an 11 inconsistent performance rating. Can you just let me 12 know what you know about the factors that went into that 13 analysis?</p> <p>14          MR. KELLY: I'm going to object to the extent 15 it says "potential."</p> <p>16          Q. Did he have any inconsistent rating?</p> <p>17          <b>A. The formal rating had not been finalized.</b></p> <p>18          Q. And what was the basis for his potential or 19 non-final inconsistent rating?</p> <p>20          <b>A. I don't have a ton of details other than his 21 manager had said that he was having performance issues. 22 I even believe some of what I would say, soft skills, I 23 don't even think he interacted with the team as well as 24 others within the team.</b></p> <p>25          Q. Any specific examples of things that he did?</p>	<p>1           <b>A. I don't have a specific assessment of how much 2 work time was dedicated to them. However, going back to 3 the policy of using data for business purposes only, 4 that's where he was breaching that code of conduct.</b></p> <p>5           Q. And I guess I'm more interested in anything 6 that somebody may have told you that was managing Bonan 7 or Nan about the fact that it looked like they were 8 working a lot, but they weren't getting anything done or 9 anything along those lines.</p> <p>10          MR. PETERSON: Wait for a question before 11 answering.</p> <p>12    BY MR. SOMENSATTO:</p> <p>13          Q. Did anybody say anything like that to you?</p> <p>14          MR. KELLY: Objection, form.</p> <p>15          MR. PETERSON: Objection to form.</p> <p>16          <b>A. No, other than Nan's performance was 17 demonstrating a bit of that.</b></p> <p>18          Q. The transaction data in the Teradata database, 19 is that stored in any other database at Capital One?</p> <p>20          MR. KELLY: Object to the form of the 21 question. Are you talking about in an official capacity 22 or in any file in Capital One systems including 23 defendants performance files?</p> <p>24          MR. PETERSON: I will object to form as far as 25 the definitions of the terms database and transaction</p>
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1	in Teradata?	1	MR. INGOGLIA: That's all I have.
2	<b>A. It is still in Teradata.</b>	2	MR. SOMENSATTO: That's all we have.
3	Q. Is it also maintained in Hadoop?	3	MR. KELLY: We don't have anything.
4	<b>A. I have not personally accessed the Hadoop</b>	4	MR. SOMENSATTO: That's all the questions that
5	<b>transaction data. I believe it is all in Hadoop as</b>	5	we have for you today. Thanks so much.
6	<b>well.</b>	6	THE WITNESS: Thank you. Appreciate it.
7	Q. Who has access to the Hadoop database?	7	MR. PETERSON: Capital One request
8	<b>A. The Hadoop access users from my teams, also</b>	8	confidential treatment for this testimony.
9	<b>some of them have access to Hadoop. It is much, much</b>	9	
10	<b>more limited than Teradata at this point.</b>	10	(Off the record at 1:40 p.m.)
11	Q. And for what purpose would someone access	11	
12	Hadoop as opposed to Teradata for transaction data?	12	
13	<b>A. The purpose is a bit more on handling larger</b>	13	
14	<b>data sets and combining them. So it's a bit more of a</b>	14	
15	<b>strategic play with large data sets.</b>	15	
16	Q. Do you know if any of the information on	16	
17	Hadoop is shared with third parties?	17	
18	<b>A. It should not be as well.</b>	18	
19	Q. But you don't necessarily know?	19	
20	<b>A. It's confidential proprietary information</b>	20	
21	<b>again, so we don't share information with our third</b>	21	
22	<b>parties.</b>	22	
23	Q. And you're not aware of any third parties that	23	
24	do have access to Hadoop?	24	
25	<b>A. I am not.</b>	25	
	90		92
1	Q. Do you know whether Bonan or Nan had access to	1	CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2	Hadoop?	2	I, Lois B. Boyle, Registered Merit Reporter
3	<b>A. I can't one hundred percent say, but I would</b>	3	and Notary Public, the officer before whom the foregoing
4	<b>think they do not or did not.</b>	4	deposition was taken, do hereby certify that the
5	MR. SOMENSATTO: Anything else?	5	foregoing transcript is a true and correct record of the
6	MR. INGOGLIA: One more.	6	testimony given; that said testimony was taken by me
7	Would you be offended if I ask the question?	7	stenographically and thereafter reduced to typewriting
8	MR. PETERSON: Please do.	8	under my direction; that the reading and signing was not
9	EXAMINATION BY COUNSEL FOR THE DEFENDANTS	9	requested; and that I am neither counsel for, related
10	BY MR. INGOGLIA:	10	to, nor employed by any of the parties to this case and
11	Q. Do you recall any instance in which Bonan was	11	have no interest, financial or otherwise, in its
12	asked to share information from the Teradata database	12	outcome.
13	with a third party?	13	IN WITNESS WHEREOF, I have hereunto set my
14	MR. PETERSON: Objection, vague.	14	hand and affixed my notarial seal this 20th day of
15	MR. INGOGLIA: In passive tense.	15	October, 2015.
16	MR. PETERSON: Passive tense by whom?	16	
17	MR. INGOGLIA: By anyone at Capital One.	17	My commission expires: July 31, 2016
18	THE WITNESS: Can you repeat the question one	18	
19	more time?	19	
20	MR. INGOGLIA: Sure.	20	_____ Lois B. Boyle, RMR
21	BY MR. INGOGLIA:	21	
22	Q. Do you recall whether Bonan was ever asked by	22	Notary Registration No. 203748
23	anyone at Capital One to share information from the	23	
24	Teradata database with a third party?	24	
25	<b>A. I'm not aware of that.</b>	25	

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